

REMARKS

Reconsideration of the rejections set forth in the Final Office Action mailed May 13, 2008 and entry of the present amendment is requested because Applicants respectfully submit that the Amendment places the application in condition for allowance or in better form for consideration on appeal.

In response to the Office Action, claims 59-73 have been canceled without prejudice (for consideration in a future divisional application), and claims 1, 25, and 26 have been amended. Accordingly, claims 1, 5, 7, 8, 21-31 are currently pending.

In the Office Action, claims 1, 5, 7, 8, and 21-31 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,162,233. In addition, claims 1 and 25-31 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. In addition, claim 1 was rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,637,194 (“the Knowles reference”), and claims 5, 7, and 8 were rejected under 35 U.S.C. § 103(a) as unpatentable over the Knowles reference. Because the cited reference fails to disclose, teach, or suggest the subject matter of the present claims, the rejections should be withdrawn.

Turning first to the judicially created doctrine of double patenting rejections, Applicants will submit a new Terminal Disclaimer once the final status of the application is determined.

With respect to the § 112, second paragraph, rejections, although Applicants believe the original language was definite, claims 1, 25, and 26 have been amended to more particularly recite the claimed fastener and method. For example, claim 1 has been amended to recite that the leg has “an initial pointed end, an unformed length dimension measured from said base to said initial

pointed end, the leg configured to be cut to a formed length dimension measured between said base and a new end.” Claim 25 has been amended to recite “cutting the fastener to form a new end between the base and the pointed end.” Finally, claim 26 has been amended to recite “cutting the leg to form a new end between the base and the pointed end.” Accordingly, Applicants request that the § 112, second paragraph, rejections be withdrawn.

Turning to the § 102(b) rejections, the Knowles reference discloses a composite wood beam assembly 10 formed by an upper chord 11, a lower chord 12 and a web 13. Col. 3, lines 33-35. The chords are formed from 2' x 4' or other standard size wood strips. Col. 3, lines 35-37. Thus, the chord 11 is not a pledge. Staples 15 are applied into the wood members for fastening the chords to the webs. Col 3, lines 63-64.

Turning to the present claims, claim 1 recites a fastener for use in surgery that includes a body having a base and a leg extending from said base; said body having a width dimension; said leg having an initial pointed end, an unformed length dimension measured from said base to said initial pointed end, the leg configured to be cut to a formed length dimension measured between said base and a new end, with the new end located between the initial pointed end and said base such that the unformed length is greater than the formed length; and a pledge on the body adjacent the base.

The Knowles reference fails to disclose, teach, or suggest anything about fasteners *for use in surgery or pledges*, as claimed. As explained in paragraph [0115] of the present application, a pledge is a well known term in the surgical field. A pledge refers to a flexible strip of fabric and the like, through which a fastener, such as a suture or fastener, is inserted before the fastener is delivered through tissue. The pledge is applied to a fastener to provide extra contact area, e.g.,

to help support tissue through which a fastener is delivered to prevent the fastener from tearing or otherwise damaging the tissue, as can be seen in FIGS. 4 and 5 of the present application.

In direct contrast, the Knowles chord 11 is a 2' x 4' or other standard size wood strip that is stapled to other wood strips to form a wood beam assembly. The chord 11 would be incapable of receiving a fastener therethrough and then be introduced into a patient's body during a surgical procedure. Besides being substantially rigid, the chord 11 is orders of magnitude larger than a pledget, as would be known by those skilled in the art. Thus, the chord 11 is completely different than a pledget, having a completely different size, structure, and purpose. Accordingly, claim 1 is neither anticipated by nor otherwise obvious over the Knowles reference.

For similar reasons, claim 5 and its dependent claims are also neither anticipated by nor otherwise obvious over the Knowles reference. Claim 5 recites a wire fastener ***for use in minimally invasive surgery*** that includes a U-shaped body having a base and two legs extending from said base; said body having a width dimension measured from one leg to the other; each leg having a pointed end and a length dimension measured from said base to the pointed end thereof; the length dimension of each leg being greater than said width dimension by a factor of five or more; and a ***pledget*** on the body adjacent the base.

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In view of the foregoing, it is submitted that the claims now presented in this application define patentable subject matter over the cited prior art. Accordingly, reconsideration and allowance of the application is requested.

Respectfully submitted,
VISTA IP LAW GROUP LLP

Date: July 14, 2008 By /William a. English/
 William A. English
 Reg. No. 42,515
 Attorneys for Applicants

2040 Main Street, 9th Floor
Irvine, CA 92614
Telephone: (562) 665-3953
Facsimile: (949) 625-8955